

Carl Anderson

From: Max L. Tribble [MTRIBBLE@SusmanGodfrey.com]
Sent: Friday, December 11, 2009 4:47 PM
To: Amy Candido; Justin A. Nelson; Joseph S. Grinstein
Cc: Edward DeFranco; Eugene Novikov; Carl Anderson; Jesse Geraci; Warren T. Burns; gil@gillamsmithlaw.com
Subject: Re: Wagner Deposition

We oppose.

HIGHLY CONFIDENTIAL & PRIVILEGED

Max Tribble
[mtribble@susmangodfrey.com]
phone: 713-653-7820
fax: 713-654-6672

CONFIDENTIAL

-----Original Message-----

From: Amy Candido <amycandido@quinnemanuel.com>
To: Justin A. Nelson; Joseph S. Grinstein; Max L. Tribble
CC: Edward DeFranco <eddefranco@quinnemanuel.com>; Eugene Novikov <eugenenovikov@quinnemanuel.com>; Carl Anderson <carlanderson@quinnemanuel.com>; Jesse Geraci <jessegeraci@quinnemanuel.com>; Warren T. Burns; gil@gillamsmithlaw.com <gil@gillamsmithlaw.com>
Sent: Fri Dec 11 18:39:44 2009
Subject: RE: Wagner Deposition

Justin,

Google intends to file a motion to expedite briefing and consideration of Google's Daubert Motion regarding Mr. Bratic requesting the following schedule:

Opening Brief -- December 16
Opposition Brief -- December 23
Reply Brief -- December 30
Hearing -- January 5

Given your objections below, we assume that you oppose Google's motion to expedite. If that is incorrect, please let me know as soon as possible.

Regards,
Amy

-----Original Message-----

From: Justin A. Nelson [mailto:jnelson@SusmanGodfrey.com]
Sent: Friday, December 11, 2009 9:20 AM
To: Amy Candido; Joseph S. Grinstein; Max L. Tribble
Cc: Edward DeFranco; Eugene Novikov; Carl Anderson; Jesse Geraci; Warren T. Burns; gil@gillamsmithlaw.com
Subject: RE: Wagner Deposition

Amy --

We disagree with your proposal. Your proposed deadlines are unrealistic and prejudicial to Function Media in that your schedule has aubert motions due in less than a week and before any depositions, responses due one week after, and replies one week after that -- all while there will be literally 6 expert deposition, not including two more that will happen after the hearing (plus of course Christmas). Moreover, expert depositions have been delayed in large part because Google, and not FM, repeatedly requested extensions on the reports in the first place. Finally, we do not see a reason why the hearing has to happen on the 5th, and forcing a briefing schedule simply to fit a hearing date on the 5th does not make sense to us. The urgency that you are showing on this issue now was not evident over the past weeks and months, and your offer of such a condensed schedule in the midst of depositions and Christmas so that the hearing can be on January 5 is prejudicial. We reiterate our offer for an agreed briefing schedule along the lines we offered on Wednesday so that there can be a hearing in advance of January 19. We'd very much like to agree on a briefing schedule here that accommodates everyone's timing. If you'd like to discuss this further, we are available for a meet and confer on Monday.

Thanks,

Justin

From: Amy Candido [mailto:amycandido@quinnemanuel.com]
Sent: Thu 12/10/2009 3:24 PM
To: Justin A. Nelson; Joseph S. Grinstein; Max L. Tribble
Cc: Edward DeFranco; Eugene Novikov; Carl Anderson; Jesse Geraci; Warren T. Burns; gil@gillamsmithlaw.com
Subject: RE: Wagner Deposition

Justin,

We cannot agree to the schedule you propose. As I mentioned on our last call, we think it is important that any Daubert issues get resolved in advance of trial and final preparations for trial. In order to do that, we think that any Daubert issues should be heard at the January 5 hearing. Accordingly, we propose the following schedule for Daubert:

Opening Briefs -- December 16
Opposition Briefs -- December 23
Reply Briefs -- December 30
Hearing -- January 5

Under this schedule, both parties would file opening briefs before the damages depositions and both parties would file opposition briefs after the damages depositions.

Please let me know if Function Media will agree to this schedule.

Thanks,
Amy

-----Original Message-----

From: Justin A. Nelson [mailto:jnelson@SusmanGodfrey.com]
Sent: Wednesday, December 09, 2009 7:39 AM
To: Amy Candido; Joseph S. Grinstein; Max L. Tribble
Cc: Edward DeFranco; Eugene Novikov; Carl Anderson; Jesse Geraci; Warren T. Burns

Subject: Re: Wagner Deposition

Amy -

Given that we are pushing up the dates for the damages expert depositions, here's the schedule for damages Daubert briefing I propose, as it makes far more sense to have briefing post-deposition:

Opening Briefs - Dec 29

Response Briefs - Jan 8

Reply Briefs - Jan 13

Please let me know your thoughts.

-----Original Message-----

From: Amy Candido <amycandido@quinnemanuel.com>

To: Justin A. Nelson; Joseph S. Grinstein; Max L. Tribble

CC: Edward DeFranco <eddefranco@quinnemanuel.com>; Eugene Novikov <eugenenovikov@quinnemanuel.com>; Carl Anderson <carlanderson@quinnemanuel.com>; Jesse Geraci <jessegeraci@quinnemanuel.com>

Sent: Tue Dec 08 19:17:17 2009

Subject: RE: Wagner Deposition

We are confirmed for December 22. Thanks.

-----Original Message-----

From: Justin A. Nelson [mailto:jnelson@SusmanGodfrey.com]

Sent: Tuesday, December 08, 2009 3:17 PM

To: Amy Candido; Joseph S. Grinstein; Max L. Tribble

Cc: Edward DeFranco; Eugene Novikov; Carl Anderson; Jesse Geraci

Subject: Re: Wagner Deposition

Yes, the 22nd would work. Please let us know asap.

-----Original Message-----

From: Amy Candido <amycandido@quinnemanuel.com>

To: Justin A. Nelson; Joseph S. Grinstein; Max L. Tribble

CC: Edward DeFranco <eddefranco@quinnemanuel.com>; Eugene Novikov <eugenenovikov@quinnemanuel.com>; Carl Anderson <carlanderson@quinnemanuel.com>; Jesse Geraci <jessegeraci@quinnemanuel.com>

Sent: Tue Dec 08 17:14:23 2009

Subject: RE: Wagner Deposition

I'm sorry -- I thought you said yesterday that you preferred December 23. Anyway, if I can make it work on our end, is December 22 ok?

-----Original Message-----

From: Justin A. Nelson [mailto:jnelson@SusmanGodfrey.com]

Sent: Tuesday, December 08, 2009 3:12 PM

To: Amy Candido; Joseph S. Grinstein; Max L. Tribble

Cc: Edward DeFranco; Eugene Novikov; Carl Anderson; Jesse Geraci

Subject: Re: Wagner Deposition

The 23rd does not work because of holiday travel. Sorry.

-----Original Message-----

From: Amy Candido <amycandido@quinnemanuel.com>

To: Justin A. Nelson; Joseph S. Grinstein; Max L. Tribble

CC: Edward DeFranco <eddefranco@quinnemanuel.com>; Eugene Novikov
<eugenenovikov@quinnemanuel.com>; Carl Anderson <carlanderson@quinnemanuel.com>; Jesse Geraci
<jessegeraci@quinnemanuel.com>

Sent: Tue Dec 08 16:57:06 2009

Subject: Wagner Deposition

Justin and Joe,

Further to our conversation yesterday, we are able to move Mr. Wagner's deposition to December 23 in San Francisco, instead of December 29. Please reconfirm that December 23 works for you.

Thanks,

Amy